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QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Written statement submitted by the International Commission of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the followng written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[8 January 1999]

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In the name of security: Israel's human rights violations in 1998

1. This statement is submitted jointly by the International Commission of Jurists (ICJ) and its Palestinian affiliate LAW - the Society for the Protection of Human Rights and the Environment

1. A crucial test for the rule of law

2. Five years on from the signing of the Declaration of Principles on 13 September 1993, there has been a marked increase in house demolitions, land confiscation and settlement activities by Israel with a view to creating facts on the ground before the final status negotiations.

3. Israel claims to be the only democratic political system in the Middle East. Respect for human rights is a fundamental principle of democracy. However, Israel justifies the annulment of many of these rights with security, legalizing what cannot be legalized, such as the use of torture. A democracy which sanctions torture, administrative detention and arbitrary arrests, restrictions of the freedom of expression, as well as illegal settlements, land confiscation and house demolitions, is untenable.

4. Israel has refused the Palestinians the protection afforded by the human rights treaties it has signed. Both the Human Rights Committee and the Committee on Economic, Social and Cultural Rights (CESCR) censured Israel's refusal to apply the respective covenants in the Occupied Territories and insisted on Israel's obligation to protect the human rights of Palestinians living in the Occupied Territories.

5. While denying the applicability of human rights treaties to the Occupied Territories, Israel simultaneously refuses to recognize and apply the international treaty specifically made to protect human rights in such territories, the Fourth Geneva Convention, in violation of United Nations General Assembly resolutions and in contradiction with international public and legal opinion.

2. Jerusalem

6. Israel continues to employ arbitrary measures, incompatible with international law, in order to expel Palestinians from Jerusalem and to replace them with Jewish settlers with the purpose of cementing control over the city. The policy applied includes confiscation of identity cards, removal of residency rights, an unjust tax and benefit system, denial of building permits and house demolitions.

7. In a significant increase from past years, about 1,466 Jerusalem identity cards were confiscated between 1996 and 31 July 1997. Between January and August 1998, 346 Jerusalem identity cards were confiscated.

8. The denial of building permits to East Jerusalem Palestinians causes immense overcrowding and, with it, potential health and social problems. Mechanisms to challenge these measures are lengthy and costly, which places them beyond the means of the majority.

9. While income levels decline among Palestinians due to closure and discrimination, they continue to be forced to pay the same level of taxes and are often discriminated against in the receipt of rebates, benefits and government services. The CESCR therefore rightly criticised Israel's Permanent Residency Law and the withdrawal of residency rights from Palestinians living in Jerusalem.

3. Settlements

10. In violation of international law and the Wye Memorandum, the Minister for Foreign Affairs of Israel, Ariel Sharon, called on settlers to "take over the hills of the West Bank before it is too late". The day after he made this statement, armed settlers seized land from the Arab village of Kufur Qadum in the Nablus district, installing mobile houses on top of nearby hills. This action has been replicated in at least a dozen recorded instances, with the tacit or active support of the Israeli military.

11. It is estimated that at least 25,000 dunums of land have been confiscated from Palestinians for settlements, including land confiscated for by-pass roads, infrastructure and military installations to protect and service settlements.

12. Under article 49 (6) of the Fourth Geneva Convention, Israeli settlements in the Occupied Territories, including East Jerusalem, are clearly illegal. The Committee on the Elimination of Racial Discrimination (CERD) restated this position. CESCR went further and found that the "consequence, if not the motivation, is the fragmentation and isolation of Palestinian communities".

4. House demolitions

13. House demolitions have continued apace and are used to secure control over territory, sometimes as a prelude to settlement building. Between the signing of the Oslo Agreement and 31 December 1998, 724 demolitions have taken place. The practice of house demolitions clearly violates the Fourth Geneva Convention. It was criticized by CESCR and the Human Rights Committee, and CERD called for a halt to the demolition of Arab property in East Jerusalem.

5. Closures and blockades

14. Blockades and closures are impermissible if employed, as Israel does, without regard to the human consequences and as a form of collective punishment.

15. In Gaza, 400 students are unable to return to universities. Across the Occupied Territories, the sick are unable to travel to receive treatment; goods cannot pass freely between the West Bank, Jerusalem, Gaza and travel externally; workers are restricted from travelling; even the Legislative Council is disrupted because elected members are denied travel or harassed.

16. As a means of guaranteeing security, closure has proved ineffective and is likely to exacerbate the environment that creates risks to security.

17. CESCR concluded that "closures have cut off Palestinians from their own land and resources, resulting in widespread violations of their economic, social and cultural rights".

6. The use of lethal force

18. The Israeli armed and security forces have continued to use heavy-handed methods, including lethal force, when confronted with Palestinian unrest or demonstrations. Three hundred and thirty-four Palestinians have been killed by Israeli soldiers or settlers since the beginning of the Oslo peace process.

19. Since the signing of the Wye Memorandum, the Israel Defence Forces (IDF) have responded with rubber-coated metal bullets and live ammunition against Palestinians protesting against Israeli violations of Wye and air attacks on Iraq, leaving five people dead and at least 570 persons injured. Among those wounded, 24 are still in serious condition. This figure includes 14 minors under the age of 18, of whom 8 are children under the age of 15. Ten of the 24 seriously injured were hit by "rubber" bullets or live ammunition in their head or face.

20. In 1998, the Human Rights Committee expressed concern about the numbers of Palestinians killed by security forces.

7. Torture

21. Israel is the only country in the world where torture has been legalized. Moreover, this practice was legalized by the Supreme Court, which should be the organ protecting human rights. In 1997, the Committee against Torture (CAT) rejected Israel's claim that it had special security obligations that should permit the use of torture. CAT concluded that even seeking to make the argument was improper: "Israel is precluded from raising before this Committee exceptional circumstances as justification for acts prohibited". However, in 1998, Israel made the same argument, which was again rejected by the Human Rights Committee and CAT. Both found Israel's application of "moderate physical pressure" to be in violation of the conventions. Torture or inhuman treatment are grave breaches of the Fourth Geneva Convention, which furthermore prohibits any physical or moral coercion against protected persons.

8. Arrest and detention

22. Israel continues to arrest Palestinians, disregarding due process safeguards. In the past five years, 880 Palestinians have been administratively detained for periods ranging from two months up to four years. Currently, 97 Palestinians are held in administrative detention. The Human Rights Committee noted that Israel's present application of administrative detention was incompatible with the International Covenant on Civil and Political Rights (ICCPR).

23. Furthermore, about 2,300 Palestinian political prisoners are detained in Israel, in most cases in violation of the Fourth Geneva Convention; some of them are held in solitary confinement. Lawyers are sometimes denied access to

Palestinian detainees. The Wye Memorandum provides for the release of 750 prisoners, but only 100 among the first 250 prisoners released were political prisoners.

24. The military court system continues to operate in a manner contrary to standards set out in the ICCPR and the Fourth Geneva Convention, including by admitting confessions extracted under torture.

9. Israeli pressure in the autonomous areas

25. Pressure by Israel to combat terrorism has encouraged the Palestinian Authority to take measures that constitute human rights violations, such as torture, arbitrary arrests and restrictions of the freedom of expression and assembly.

26. Beyond the serious violations of human rights, the consequence of these actions has been the erosion of judicial and democratic processes in the autonomous areas, thereby creating an even greater risk to human rights. The reaction of the local community to repression due to pressure from Israel has been a significant decline in support for the peace process and for the Palestinian Authority.

10. Human rights concerns in the Wye Memorandum

27. The security arrangements stipulated in the Wye Memorandum threaten to undermine respect for human rights and the rule of law. They create a security superstructure overseen through forums which govern matters of arrest, detention, imprisonment, censorship and military actions against groups and individuals. However, these forums are not accountable before any democratic institution and there is no judicial remedy against their decisions. Unlike previous agreements, the Wye Memorandum fails to include any standards that ensure respect for human rights by all parties concerned.

11. Conclusion

28. ICJ and LAW welcome Commission of Human Rights resolution 1998/1 and call upon this body to pursue its stand on the range of human rights violations committed by Israel. In 1999 more than ever, it has to be stressed that peace and security cannot be legitimately pursued and will not be achieved by violating human rights or by committing grave breaches of the Fourth Geneva Convention. These breaches furthermore constitute war crimes. By virtue of articles 146 and 147 of the Fourth Geneva Convention, all States parties have jurisdiction over such crimes and are under an obligation to prosecute or extradite their perpetrators. By this and other means, the international community has to ensure respect by Israel for the rights of the Palestinian residents.